

OFFICE OF THE ATTORNEY GENERAL
State of California

OPINION

of

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[illegible]

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3. Who is the officer authorized to prosecute a criminal complaint under the provisions of section 48291 of the Education Code?

CONCLUSIONS

1. The county probation officer is authorized to file a petition in juvenile court under the provisions of section 48263 of the Education Code.
2. The procedure under section 48263 of the Education Code respecting the hearing upon the petition satisfies the requirements of procedural due process.
3. The district attorney is authorized to prosecute a criminal complaint under the provisions of section 48291 of the Education Code.

ANALYSIS

The first inquiry concerns the designation of the officer who is authorized to file a petition in juvenile court pursuant to the provisions of section 48263 of the Education Code:

“If any minor pupil in any district of a county is an habitual truant, or is irregular in attendance at school, as defined in this article, or is habitually insubordinate or disorderly during attendance at school, the pupil may be referred to a school attendance review board. The supervisor of attendance, or such other persons as the governing board of the school district or county may designate, making such referral shall notify the minor and parents or guardians of the minor, in writing, of the name and address of the board to which the matter has been referred and of the reason for such referral. The notice shall indicate that the pupil and parents or guardians of the pupil will be required, along with the referring person, to meet with the school attendance review board to consider a proper disposition of the referral.

“If the school attendance review board determines that available community services can resolve the problem of the truant or insubordinate pupil, then the board shall direct the pupil or the pupil’s parents or guardians, or both, to make use of such community services. The school attendance review board may require, at such time as it determines proper, the pupil or parents or guardians of the pupil, or both, to furnish satisfactory evidence of participation in the available community services.

“If the school attendance review board determines that available community services cannot resolve the problem of the truant or insubordinate pupil or if the pupil or the parents or guardians of the pupil, or both, have

failed to respond to directives of the school attendance review board or to services provided, the school attendance review board may direct the county superintendent of schools to, and, thereupon, *the county superintendent of schools shall, request a petition on behalf of the pupil in the juvenile Court of the county.* Upon presentation of a request for a petition on behalf of a pupil, the juvenile court of the county shall hear all evidence relating to the request for petition. The school attendance review board shall submit to the juvenile court documentation of efforts to secure attendance as well as its recommendations on what action the juvenile court shall take in order to bring about a proper disposition of the case.” (Emphasis added.)

Upon the direction of the school attendance review board (“board,” *post*) the county superintendent of schools is required, as a mandatory duty, to “request a petition . . . in the juvenile court. . . .” The statute does not purport to prescribe a procedure, nor to expressly designate the officer whose function it is to file the petition or to prosecute the proceeding.

We turn to the provisions of the Welfare and Institutions Code.¹ Section 601.1 provides:

“Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of school authorities, and is thus beyond the control of such authorities, or who is a habitual truant from school within the meaning of any law of this state, shall, prior to any referral to the juvenile court of the county, be referred to a school attendance review board pursuant to Section 48263 of the Education Code.”

Section 601, subdivision (b) provides:

“If a school attendance review board determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor’s persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court; provided, that it is the intent of the Legislature that no minor who is adjudged a ward of the court pursuant solely to this subdivision shall be removed from the custody of the parent or guardian except during school

¹Hereafter, all unidentified references are to said code.

hours.”

Section 650, subdivision (a) provides:

“A proceeding in the juvenile court to declare a minor a dependent child of the court or a ward of the court under Section 601, *is commenced by the filing with the court, by the probation officer, of a petition*, in conformity with the requirements of this article.” (Emphasis added.)

Finally, section 653 provides in part:

“Whenever any person applies to the probation officer to commence proceedings in the juvenile court, such application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 300, *601*, or 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. *The probation officer shall immediately make such investigation as he deems necessary to determine whether proceedings in the juvenile court should be commenced.* (Emphases added.)²

A perceived conflict arises upon a literal comparison of the respective statutes. While the last paragraph of Education Code section 48263 may be interpreted to suggest that the proceedings in the juvenile court may be initiated directly by the county superintendent of schools, section 650(a) provides expressly that such proceedings are commenced by the probation officer.

When apparent conflicts or inconsistencies appear in separate codes, it is the established rule of construction that such codes are to be regarded as blending into each other and constituting a single statute. (*Pesce v. Dept. Alcoholic Bev. Cont.* (1958) 51 Cal. 2d 310, 312; *Pacific Motor Transport Co. v. State Bd. of Equal.* (1972) 28 Cal. App. 3d 230, 235.) In such a case, the integrity of both statutes must be maintained if possible.

²The failure of the probation officer to file a petition is subject to judicial review Section 655, subdivision (b) provides:

“When any person has applied to the probation officer, pursuant to Section 653, to commence juvenile court proceedings to declare a minor a dependent child of the court or a ward of the court under Section 601 and the probation officer fails to file a petition within 21 court days after making such application, the applicant may, within 10 court days after receiving notice of the probation officer’s decision not to file a petition, apply to the juvenile court to review the decision of the probation officer, and the court may either affirm the decision of the probation officer or order him or her to commence juvenile court proceedings.”

(*Warne v. Harkness* (1963) 60 Cal. 2d 579, 588; *Pacific Motor Transport Co. v. State Bd. of Equal.*, *supra.*) In spite of some tension which may arise by virtue of the implications of the last two sentences of Education Code section 48263 when considered in isolation, the apparent inconsistency of the respective codes perceived as a single statutory expression is not difficult to resolve.

Section 601.1 specifically refers to the concomitant section of the Education Code. Section 601(b) pertains to the same subject matter. Section 650(a) unequivocally provides that a proceeding under section 601 “is commenced by the filing with the court, by the probation officer, of a petition.” By attributing to sections 650(a) and 653 their plain and simple meaning, the integrity of neither code is impaired. It is the duty of the superintendent to *request a petition*. In common parlance and understanding, a petition” is a document prepared by a moving party for presentation *to* a court. (*Cf.* § 656.) A request *for* a petition can only be made to a party or officer other than a court. In this context, the designated officer is the probation officer.

While the penultimate sentence of Education Code section 48263 is technically imprecise, the sense of it is clear; upon the presentation of a petition, the court shall hear all evidence relating thereto. The second inquiry is whether this procedure conforms to the requirements of procedural due process. The Education Code provision must be read in conjunction with the procedural specifications of the Welfare and Institutions Code, commencing with section 650. Section 658 provides for notice:

“*Upon the filing of the petition, the clerk of the juvenile court shall issue a notice, to which shall be attached a copy of the petition, and he shall cause the same to be served upon the minor, if the minor is eight or more years of age, and upon each of the persons described in subdivision (e) of Section 656 whose residence addresses are set forth in said petition and thereafter before the hearing upon all such persons whose residence addresses become known to the clerk. The clerk shall issue a copy of the petition, to the minor’s attorney and to the district attorney, if the district attorney has notified the clerk of the court that he wishes to receive such petition, containing the time, date, and place of the hearing.*” (Emphases added.)³

³Section 656 prescribes the contents of a petition.

“A petition to commence proceedings in the juvenile court to declare a minor a ward of the court shall be verified and must contain:

“(a) The name of the court to which the same is addressed.

“(b) The title of the proceeding.

Section 659 provides:

“The notice must contain:

“(a) The name and address of the person to whom the notice is directed.

“(b) The date, time, and place of the hearing on the petition.

“(c) The name of the minor upon whose behalf the petition has been brought.

“(d) Each section and subdivision under which the proceeding has been instituted.

“(e) A statement that the minor and his parent or guardian or adult relative, as the case may be, to whom notice is required to be given, are entitled to have an attorney present at the hearing on the petition, and that, if the parent or guardian or such adult relative is indigent and cannot afford an attorney, and the minor or his parent or guardian or such adult relative desires to be represented by an attorney, such parent or guardian or adult relative shall promptly notify the clerk of the juvenile court.”

It is well established that every intendment favors the constitutional validity of legislation. (*Department of Alcoholic Bev. Cont. v. Superior Court* (1968) 268 Cal. App. 2d 67, 74.) As a corollary to that doctrine, it is also settled that a statute should be construed

“(c) The code section or sections and subdivision or subdivisions under which the proceedings are instituted.

“(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

“(e) The name or names and residence address, if known to petitioner, of all parents and guardians of such minor. If there is no parent or guardian residing within the state, or if his place of residence is not known to petitioner, the petition must also contain the name and residence address, if known, of any adult relative residing within the county, or, if there be none, the adult relative residing nearest to the location of the court.

“(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

“(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he is detained in custody, the date and the precise time the minor was taken into custody.”

in the light of constitutional constraints. (*County of Los Angeles v. Riley* (1936) 6 Cal. 2d 625, 628–629.) Construing the statutes together, as an integral whole, and in the light of constitutional constraints, there can be no doubt whatever that the requirement of *notice* “[u]pon the filing of the petition” within the meaning of section 658 precedes the taking of *evidence* “[u]pon presentation . . . [of] a petition” as provided in section 48263 of the Education Code.⁴ This statutory procedure for notice and hearing (see § 675 *et seq.*)⁵ conforms to the essentials of due process and fair treatment. (*Cf. In re Dennis M.* (1969) 70 Cal. 2d 444, 452–453.)

The final inquiry concerns the designation of the officer who is authorized to prosecute a criminal complaint pursuant to the provisions of section 48291 of the Education Code which provide:

“If it appears upon investigation that any parent, guardian, or other person having control or charge of any child has violated any of the provisions of this chapter, the secretary of the board of education, except as provided in Section 48292, or the clerk of the board of trustees, shall refer such person to a school attendance review board. In the event that any such parent, guardian, or other person continually and willfully fails to respond to directives of the school attendance review board or services provided, *the school attendance review board shall direct the school district to make and file in the proper court a criminal complaint* against the parent, guardian, or other person, charging the violation, *and shall see that the charge is prosecuted by the proper authority.* In the event that a criminal complaint is not prosecuted by the proper authority as recommended, the official making the determination not to prosecute shall provide the school attendance review board with a written explanation for the decision not to prosecute.” (Emphases added.)

Section 601.2 provides:

“In the event that a parent or guardian or person in charge of a minor described in Section 601.1 fails to respond to directives of the school attendance review board or to services offered on behalf of the minor, the school attendance review board shall direct that the minor be referred to the

⁴Toward this end, section 657 provides that the hearing on the petition shall be set, except as therein otherwise provided, within 30 days of the filing thereof.

⁵The procedure for the conduct of the “jurisdictional hearing” (trial) phase, and the dispositional hearing are set forth in sections 700–701, and 702 respectively.

probation department or to the county welfare department under Section 300, and *the school attendance review board may require the school district to file a complaint* against the parent, guardian, or other person in charge of such minor *as provided in Section 48291* or Section 48454 of the Education Code.” (Emphases added.)

While these sections provide that the school district shall “file” or “make” a complaint, which is an accusatory pleading, the “proper authority” for the prosecution of such complaint is the district attorney. Section 26500 of the Government Code provides that the district attorney, except as otherwise provided by law, is the “public prosecutor,” and shall, within his discretion, initiate and conduct on behalf of the people all prosecutions for “public offenses.” A public offense is an act committed or omitted in violation of a law forbidding or commanding it, and which, upon conviction, is subject to punitive sanction. (Pen. Code, § 15.) Acts or omissions which may be charged under Education Code section 48291 are subject to punitive sanction (Ed. Code, § 48293), and are therefore public offenses. Hence, no one may institute such a proceeding without the concurrence, approval, or authorization of the district attorney. (*Hicks v. Board of Supervisors* (1977) 69 Cal. App. 3d 228, 241.) Nevertheless, Education Code section 48291 expressly provides that a district attorney who decides not to prosecute a charge under that section shall provide the board with a written explanation of such decision.
